

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**MICKEY J. YANNONE,**

**Plaintiff,**

**v.**

**MICHAEL J. ASTRUE, Commissioner of  
Social Security,**

**Defendant.**

**06 Civ. 15502 (SCR)(GAY)**

**MEMORANDUM ORDER  
ACCEPTING REPORT AND  
RECOMMENDATION**

**STEPHEN C. ROBINSON, United States District Judge:**

Plaintiff Mickey Yannone commenced this action pursuant to 42 U.S.C. § 405(g), seeking review of a final determination of the Commissioner of Social Security (“the Commissioner”) denying Mr. Yannone’s application for disability insurance benefits. The parties filed cross-motions for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

This matter was referred to United States Magistrate Judge George A. Yanthis, who issued a Report and Recommendation on August 27, 2008 advising this Court to grant Plaintiff’s motion insofar as it seeks remand to the Commissioner for further administrative proceedings and to deny the Commissioner’s cross-motion. The parties have not filed any objections.

**I. STANDARD OF REVIEW**

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C § 636(b)(1). To accept a Report and Recommendation to which no

timely objection has been made, a district court need only satisfy itself that “there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted); *accord Edwards v. Fischer*, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006); *see also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is “not facially erroneous”). As neither party has objected to Judge Yanthis’s Report and Recommendation, this Court will review the Report and Recommendation for clear error.

## II. DISCUSSION

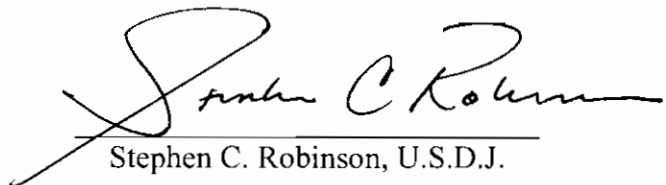
This Court has reviewed Judge Yanthis’s comprehensive and well-reasoned Report and Recommendation and has determined that there is no clear legal error on the face of the record. Accordingly, the Court adopts Judge Yanthis’s Report and Recommendation in its entirety. Because the Commissioner has not met his burden of establishing that there is other gainful work in the national economy which the Plaintiff could perform, *see Tejada v. Apfel*, 167 F.3d 770, 774 (2d Cir. 1999); *Balsamo v. Chater*, 142 F.3d 75, 80 (2d Cir. 1998), the matter must be remanded for further administrative proceedings. Plaintiff’s motion for judgment on the pleadings is therefore granted in accordance with the Report and Recommendation, and the Commissioner’s cross-motion is denied.

The Clerk of the Court is directed to close the case.

*It is so ordered.*

Dated: White Plains, New York

March 3, 2010

  
Stephen C. Robinson, U.S.D.J.